

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of

Acceleration of Broadband Deployment
Expanding the Reach and Reducing the Cost of
Broadband Deployment by Improving Policies
Regarding Public Rights-of-Way and Wireless
Facilities Siting.

WC Docket No. 11-59

RESPONSE OF SPOTSYLVANIA COUNTY, VIRGINIA

Spotsylvania County files these comments in response to the Notice of Inquiry (NOI), released April 7, 2011, in the above-titled proceeding. Through these comments, Spotsylvania County seeks to provide the Commission with information regarding its local right-of-way and facility management practices and fees, leases, and other charges associated with the use of the rights-of-way and other facilities. The Commission should not interfere with these local policies, as Spotsylvania County has established considerable expertise applying its policies to protect and further public safety, economic development, and other community interests. By adoption of rules in this area, the Commission could disrupt this process at substantial cost to local taxpayers and to the local economy. We believe that a basic respect for federalism, interpretation of the Telecommunications Act, and honest assessment of the Commission's limited expertise on local land-use matters lend credence to the conclusion that federal regulation would be overall detrimental to our community.

Spotsylvania County, through the Board of Supervisors, Planning Commission, Telecommunication and Cable Commission, and staff, has successfully implemented a fair and equitable process, through code enactment, that allows for the continued development and enhancement of broadband capabilities throughout the county. There is no substantive evidence that our code, policies,

and/or fees with respect to placement of facilities in the rights-of-way or on County property (such as water and public safety radio communication towers), have discouraged broadband deployment.

Spotsylvania County codes and policies allow us to work with any company willing to provide service.

No company has cited our policies as a reason that it will not provide broadband service. Further, we

believe that our policies have helped to avoid problems and delays in broadband deployment by

ensuring that such deployment goes smoothly both for the providers that follow the rules and for the

community. Spotsylvania County, in many instances, applies administrative business processes that

allow for expedited variances and approvals of wireless communications facilities that lessen the

amount of time and expense in obtaining required approvals for construction or placement of wireless

communications facilities.

In response to the NOI, Spotsylvania County provides the following information:

I. Application Procedures, Forms, Sustentative Requirements, and Charges

The Commission asks whether all necessary application procedures, forms, substantive requirements, and charges are readily available.

Spotsylvania County provides all necessary forms, applications, and ordinances on its website in a predominant and easy to find location. Additionally, staff and management may be contacted by phone, via e-mail, or in person to further assist applicants with questions or concerns about application requirements or processes.

Additionally, Spotsylvania County's Wireless Telecommunications Facilities ordinance clearly outlines and explains each step of the application, review, and approval process in explicit detail, so as to provide the applicant clear direction throughout the process. A pre-application meeting is required by code, to ensure the applicant fully understands the process and allow the collaboration of County and applicant to occur in a positive and progressive manner.

II. Sources of Delays

The Commission asks what factors are chiefly responsible when applications are not processed in a timely manner. The Commission also asks about errors or omissions in applications.

Spotsylvania County has structured the special use permitting process with the expectation that the applicant will file a complete application and have informed the community of the proposed tower and received feedback from the community prior to application. These pre-application efforts typically allow the application to proceed through the review process in a timely manner. Incomplete applications result in delays in the review process and inadequate community outreach may result in delays during the public hearings. Once a complete application has been made, the Special Use process is typically six to seven months, which includes review and recommendation development by staff with input on the technical aspects of the application by a telecommunication consultant and public hearings before the Planning Commission and the Board of Supervisors, including the mandated public notice periods.

III. Improvements

The Commission asks whether there are particular practices that can improve processing.

Spotsylvania County has recognized a number of practices that have improved the processes related to obtaining any required approvals for placement of facilities, including developing accelerated review processes. The County has also implemented a policy of requiring a pre-application meeting with the director of planning, and assigning a primary staff

member to each case upon receipt of the application, to ensure consistency of communications as it relates to the application process and requirements.

Spotsylvania County has also began a yearly review of all fees associated with public rights-of-way and tower siting, and established a methodology for closely tracking actual costs and making fee adjustments to reflect accurately the amount of time and effort required. This yearly process allows the County to re-evaluate procedures and processes for improvement, and ensure that minimal fees are charged for the work effort produced.

IV. Permitting Charges

The Commission seeks data on current permitting charges, including all recurring and non-recurring charges, as well as any application, administrative, or processing fees. Specifically, the Commission asks commenters to identify:

- Type of facility for which such charges are assessed;
- How such charges are structured (e.g., per foot or percent of revenue in the case of rights-of-way fees);
- Whether the community is subject to comprehensive state franchising or rights-of-way laws;
- Whether the charges are published in advance or individually negotiated, designed to approximate market rates or merely recover costs (direct and/or indirect), accompanied by comprehensive terms and conditions; and

The Commission further asks whether such charges are related to impacts on the local community, such as pavement restoration cost projects that involve trenching in roadways.

Spotsylvania County charges modest fees for the assessment and issuance of necessary permits, variances, or other required approvals. For example, the application fee for a stand-alone facility (tower) requiring special-use approval and a public hearing is approximately

\$13,000. Collected fees serve to defray the necessary expense associated with application processing and review, including compensation to a wireless telecommunications consultant for evaluation of the technical data provided by the applicant.

Virginia does have comprehensive state and local franchising laws.

V. *Local Policy Objectives*

The Commission asks what policy goals and other objectives underlie the local practices and charges in this area.

Spotsylvania County policies are designed to facilitate the responsible deployment of services and ensure broad and competitive availability of broadband services. The County also employs policies designed to further the aesthetic appeal of the community, preserve significant historical features (due to Spotsylvania County playing a predominant role during the Civil War, and the subsequent extensive list federal and state historical sites located throughout the entire jurisdiction), and promote well-planned growth and protection of the local environment.

Specifically, goals established, per local ordinance, include:

1. Accommodate wireless telecommunication services while minimizing the impact of tower sites on the community.
2. Require wireless telecommunication facilities to be sited and designed in a way that minimizes infringement upon and degradation of the scenic and historical resources of the county and adjacent properties.
3. Encourage co-location of antennae on towers and/or alternative support structures.
4. Comply with applicable federal, state and local rules and regulations so as to accommodate the provision of a broad range of wireless telecommunication services in a safe, effective and efficient manner.
5. Encourage economic development of Spotsylvania County to ensure the prosperity

of future generations. Most cities and counties do not have the resources to provide a costly telecommunications infrastructure, thus the role of local government has evolved into providing an environment that encourages the development of this crucial infrastructure. Spotsylvania County takes seriously its responsibility for investing in and shaping the economic development of its communities, while, at the same time, protecting residential areas and land uses from potential adverse impacts of wireless telecommunications facilities.

6. Promote the public health, safety and general welfare of the community.
 - a. To avoid potential damage to adjacent properties from tower failure and falling objects through engineering structural standards and setback requirements.
 - b. To mitigate and address the potentially adverse effects of wireless telecommunications facilities on human health and safety.
 - c. To require compliance of safety standards consistent with applicable federal and state regulations.

VI. *Possible Commission Actions*

Finally, the Commission asks what actions the Commission might take in this area. As noted above, Spotsylvania County strongly urges the FCC to refrain from regulating local rights-of-way management and facility placement processes. These are highly fact-specific matters that are based on local engineering practices, local environmental and historical conditions, local traffic and economic development patterns, and other significant community concerns and circumstances. These matters are managed by local staffs with extensive expertise with the unique local landscape of Spotsylvania County. Imposing a federal regulatory regime would create unnecessary costs for our community, and would have the potential to

undermine important local policies. Likewise, Commission regulation of charges for use of the rights-of-way could have significant adverse impacts on the community and potentially make infeasible the County's ability to continue to maintain or provide important public services. If the Commission feels compelled to take action in this area, those actions should be limited to voluntary programs and educational activities, as well as implementation of its own recommendations in the National Broadband Plan for working cooperatively with state and local governments.

CONCLUSION

Spotsylvania County urges the Commission to conclude that rights-of-way and facility management and fees are not impeding broadband deployment. As outlined above, County policies and procedures are designed to protect important local interests, which has been done successfully for numerous years. There is no evidence that these policies have impaired any company from providing broadband service in Spotsylvania County, and there are significant reasons to believe that federal regulations would prove costly and detrimental to our community.

Respectfully submitted,

Spotsylvania County

By: Spotsylvania County Board of Supervisors

Benjamin Pitts, Chairman
Doug Barnes, County Administrator
Wanda Parrish, Planning Director
Jane Reeve, Information Services Director